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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,769	10/12/2005	Gerrit Hollemans	NL 030392	2211

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EXAMINER

MONIKANG, GEORGE C

ART UNIT	PAPER NUMBER
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2615

MAIL DATE	DELIVERY MODE
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11/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,769

Applicant(s)

HOLLEMANS ET AL.

Examiner

George C. Monikang

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/12/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☒ Certified copies of the priority documents have been received in Application No. 10/552,769.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/3/2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 & 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Vossler, US Patent 7,206,429 B1.

Re Claim 1, Vossler discloses a personal audio system (100) comprising a remotely controllable device (110) and a controller (120) for remotely controlling the device (110) by sending a control signal (130) to the device (110) (fig. 1a: 110; col. 2, lines 26-35), the controller (120) having an outer surface (121) with a touch-sensitive area (122) (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), the controller (120) being arranged to be substantially worn in or by a human ear (150) (fig. 1b), the controller (120) being further arranged to detect the touch-sensitive area (122) being touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), and to send the control signal (130) in response to detecting the touch-sensitive area (122) being touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive).

Re Claim 2, Vossler discloses a personal audio system (100) as claimed in claim 1, characterized in that the controller (120) is arranged to fit substantially in a human ear (150) concha (160) (fig. 1b), such that the area is accessible for touching when the controller (120) is fitted substantially in the concha (160) (fig. 1a: 110; fig. 1b; col. 2, lines 26-35: external controls are touch sensitive).

Re Claim 3, Vossler discloses a personal audio system (100) as claimed in claim 1, characterized in that the controller (120) is arranged to detect a temporal pattern in the touch-sensitive area (122) being touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3), and to send the control signal (130) in response to detecting the temporal pattern (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3).

Claim 7 has been analyzed and rejected according to claim 1.

Re Claim 8, Vossler discloses a personal audio device (110) which is remotely controllable by a controller (120) (fig. 1a: 110; col. 2, lines 26-35), the controller (120) having an outer surface (121) with a touch-sensitive area (122) (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), the device (110) being arranged to detect the area being touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), and to activate a function of the device (110) in response to detecting the area being touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32).

Claim 9 has been analyzed and rejected according to claim 8.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vossler, US Patent 7,206,429 B1 as applied to claim 3 above, in view of Boesen, US Patent 6,560,468 B1.

Re Claim 4, Vossler discloses a personal audio system (100) as claimed in claim 3, characterized in that the outer surface (121) has a further touch-sensitive area (123) (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), the controller (120) being arranged to send the control signal (130) only if the further touch-sensitive area (123) is touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32), but fails to disclose the touch-sensitive area (123) touched substantially by the ear (150) when the controller (120) is substantially worn in

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or by a human ear (150). However, Boesen does (col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear).

Taking the combined teachings of Vossler and Boesen as a whole, one skilled in the art would have found it obvious to modify the personal audio system (100) as claimed in claim 3, characterized in that the outer surface (121) has a further touch-sensitive area (123) (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), the controller (120) being arranged to send the control signal (130) only if the further touch-sensitive area (123) is touched (fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32) with the touch-sensitive area (123) touched substantially by the ear (150) when the controller (120) is substantially worn in or by a human ear (150) as taught in Boesen (col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear) so the system can be more dynamic.

Re Claim 5, the combined teachings of Vossler and Boesen disclose a personal audio system (100) as claimed in claim 4, characterized in that the controller (120) is arranged to send a further control signal (131) to the device (110) if the further touch-sensitive area (123) is touched (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32).

Re Claim 6, the combined teachings of Vossler and Boesen disclose a personal audio system (100) as claimed in claim 4, characterized in that the system (100) comprises a controller (120) for remotely controlling the device (110) by sending a further control signal (131) to the device (110) (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32), the controller (120)

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having an outer surface (121) with a further touch-sensitive area (123) (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32), the controller (120) being arranged to be substantially worn in or by a human ear (150) (Vossler, fig. 1b), and the controller (120) being further arranged to detect a further temporal pattern in the further touch-sensitive area (123) being touched (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32), and to send the further control signal (131) in response to detecting the further temporal pattern (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32).

The combined teachings of Vossler and Boesen fail to disclose the controller being a second controller. Official notice is taken that both the concepts and advantages of providing a second controller are well known in the art. It would have been obvious to provide a second controller for the reason of providing sound to both ears simultaneously.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Monikang whose telephone number is 571-270-1190. The examiner can normally be reached on M-F, alt Fri. Off 7:30am-5:00pm (est).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George Monikang

11/7/2007



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